

DALLAS COUNTY ROADS—ADMINISTRATION

CHAPTER 790

S. B. No. 877

An Act relating to county road administration in Dallas County; repealing Chapter 458, Acts of the 47th Legislature, Regular Session, 1941, as amended.

Be it enacted by the Legislature of the State of Texas:

Section 1. Chapter 458, Acts of the 47th Legislature, Regular Session, 1941, as amended, is repealed.

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 30, 1981: Yeas 31, Nays 0; passed the House on May 23, 1981, by a non-record vote.

Approved June 17, 1981.

Effective Aug. 31, 1981, 90 days after date of adjournment.

WATER WELL DRILLERS—LICENSURE AND REGULATION

CHAPTER 791

S. B. No. 915

An Act relating to continuation of the functions of the Texas Water Well Drillers Board and regulation of water well drillers; amending the Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

Section 1. The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes), is amended ⁶⁵ to read as follows:

Short title

"Section 1. This Act shall be known and may be cited as 'The Water Well Drillers Act.'

Definitions

"Sec. 2. The following words and phrases as used in this Act shall have the following meanings unless a different meaning clearly appears from the context. The singular form shall also mean plural form and the masculine gender shall also include the feminine and neuter genders.

⁶⁵. V.A.T.S. Water Auxiliary Laws, art. 7621e.

"(a) 'Person' shall mean any individual, whether or not connected with a firm, partnership, association, corporation, or any other group or combination acting as a unit.

"(b) 'Board' shall mean the Texas Water Well Drillers Board.

"(c) 'Executive director' shall mean the executive director of the Texas Department of Water Resources.

"(d) 'Department' shall mean the Texas Department of Water Resources.

"(e) 'Water well' shall mean any artificial excavation constructed for the purpose of exploring for or producing ground water. The term, however, shall not include any test or blast holes in quarries or mines, or any well or excavation for the purpose of exploring for, or producing oil, gas, or any other minerals unless the holes are used to produce ground water.

"(f) 'Water well driller' shall mean any person (including owner, operator, and drilling supervisor) who engages for compensation in the drilling, boring, coring, or construction of any water well in this State. The term, however, shall not include any person who drills, bores, cores, or constructs a water well on his own property for his own use or a person who assists in the construction of a water well under the direct supervision of a licensed water well driller and is not primarily responsible for the drilling operations.

"(g) 'Licensed water well driller' shall mean any person who holds a license issued by the State of Texas pursuant to the provisions of this Act.

"(h) 'Pollution' shall mean the changing of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in a way that makes the water harmful to humans, animal life, vegetation, or property or to the public health, safety, or welfare or that impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

"(i) 'Well log' shall mean a log accurately kept, at the time of drilling, showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size and character of casing installed, together with any other data or information required by the Board, on forms prescribed by the Board.

"(j) 'Water Well Drillers Board' shall mean an examining board consisting of nine (9) members, all of whom shall be voting members appointed by the Governor with the advice and consent of the Senate as hereinafter provided.

"(k) 'License fee' shall mean the initial fee to be paid by a driller under this Act.

"(l) 'Renewal fee' shall mean that fee paid by a previously licensed driller.

"(m) 'Examination fee' shall mean that non-refundable fee required of each applicant for each examination.

License required

"Sec. 3. (a) It shall be unlawful for any person to act as or to offer to perform services as a water well driller without first obtaining a license in the manner prescribed herein and pursuant to the rules of the Water Well Drillers Board.

"(b) Applications shall contain the name of the applicant, his business address, his permanent mailing address, and such other relevant information as the Board may require.

"(c) At the time of making application, each applicant shall pay to the department the required examination fee which shall be non-refundable; and the successful candidates upon notification of eligibility shall pay to the department the license fee.

"(d) All licenses issued under this Act shall expire on August 31 of each year; and on or before that day, each person holding a license shall pay to the department an annual renewal fee. The department shall notify each licensee in writing of the licensee's impending license expiration at least 30 days before the expiration and shall attempt to obtain from each licensee a signed statement confirming receipt of the notice. A person may renew his unexpired license by paying to the department before the expiration date of the license the required renewal fee. If a person's license has been expired for 90 days or less, the person may renew the license by paying to the department the required renewal fee and a fee that is one-half of the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the department all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

"(e) The department shall maintain a current register of licensees.

"(f) A license shall not be transferable or assignable.

"(g) A duplicate license to replace a lost or destroyed license shall be issued by the department upon proper application and payment of a fee.

"(h) The Board shall establish for the administration of this Act reasonable and necessary fees not exceeding the following amounts:

"1. Examination	\$ 25
"2. License	100
"3. Renewal	100
"4. Duplicate License	10

"(i) The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

"(j) Each applicant shall have been a resident of the State of Texas for not less than 90 days prior to making application for a license as a water well driller.

Licenses

"Sec. 3A. The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license renewal fees payable on August 31 shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license renewal fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Endorsement

"Sec. 4. The Board may develop rules specifying grounds by which the department may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Reporting of well logs

"Sec. 5. Every licensed water well driller drilling, deepening or otherwise altering a water well within this State shall make and keep, or cause to be made and kept, a legible and accurate well log, and within 30 days from the completion or cessation of drilling, deepening or otherwise altering such a water well, shall deliver or transmit by certified mail a copy of such well log to the department, and the owner thereof or the person having had such well drilled. Each copy of a well log, other than a department copy, shall include the name, mailing address, and telephone number of the Board and the department. The well log required herein shall at the request in writing to the department, by certified mail, by the owner or the person having such well drilled be held as confidential matter and not made of public record.

Water Well Drillers Board

"Sec. 6. (a) The Water Well Drillers Board shall be composed of nine (9) members appointed by the governor with the advice and consent of the senate. Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

"(b) Six (6) members shall be water well drillers who have the following qualifications:

"(1) Each such driller shall be a citizen of the State of Texas.

"(2) Each such driller shall have experience in the water well drilling business prior to his appointment.

"(3) Each such driller shall be conversant in water well drilling, completion and plugging methods and techniques.

"(4) Each such driller shall be a licensed water well driller.

"(5) One driller shall be selected from the State at large and one of each such drillers shall be selected from the following geographic areas of the State of Texas:

"A. Gulf Coast Area.

"B. Trans-Pecos Area.

"C. Central Texas Area.

"D. North-East Texas Area.

"E. Panhandle-South Plains Area.

"(6) It is further provided that no more than one (1) driller member may be employed by or own an interest in the same company, firm or business association which is engaged in any phase of the water well drilling business.

"(c) Three members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

"(1) is licensed by an occupational regulatory agency in the field of water well drilling; or

"(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in, a business entity or other organization related to the field of water well drilling.

"(d) A Board member or an employee of the Board or the department connected with the administration of this Act may not be an officer, employee, or paid consultant of a trade association in the water well drilling industry and may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

"(e) A person who, because of his activities on behalf of a trade or professional association in the regulated profession, is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252—9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

"(f) It is a ground for removal from the Board if a member:

"(1) does not have at the time of appointment the qualifications required by Subsection (b) or (c) of this section for appointment to the Board;

"(2) does not maintain during his service on the Board the qualifications required by Subsection (b) or (c) of this section for appointment to the Board;

"(3) violates a prohibition prescribed by Subsection (d) or (e) of this section; or

"(4) fails to attend at least one-half of the regularly scheduled meetings held each year, excluding meetings held when the person was not a Board member.

"(g) All terms shall expire on September 15 and all regular appointments shall be for terms of six (6) years.

"(h) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act.

"(i) The Board shall hold meetings at the call of the chairman. Meetings shall be conducted in compliance with Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252—17, Vernon's Texas Civil Statutes).

"(j) A majority of the Board is a quorum for conducting business.

"(k) The Board shall elect a chairman by a majority vote at the first meeting each year. The Board may recognize, prepare, or carry out continuing education programs for its licensees. Participation in the programs is voluntary.

"(l) The Board shall prepare examinations and pass upon qualifications of applicants for licenses and cause to be issued licenses to those who qualify.

"(m) The Board shall design written examinations in such a manner as to disqualify any person lacking in the necessary knowledge of drilling, completion and plugging methods and techniques and of ground water formations to the extent that the performance by such person of services as a water well driller would create a serious risk of polluting fresh water. Provided, however, that each applicant shall have the right to have such examination given him orally, in lieu of in writing.

"(n) Administration of examination:

"(1) The department shall offer examinations prepared by the Board at least once a year and more frequently if more than 10 persons petition the Board for an additional examination, or the Board should so provide.

"(2) The examination shall be so administered so that the one who grades an examination does not know whose paper he is grading.

"(3) The department shall maintain files of examination papers. Not later than the 30th day after the date a licensing examination is administered under this Act, the department shall notify each examinee of the

results of the examination. A person, at any time within six months of the date that he is notified of the results of an examination, is entitled to inspect his examination paper during normal business hours at the department's offices for the purpose of challenging the propriety of the questions, the method of grading, and the accuracy of grading. If requested in writing by a person who fails the licensing examination administered under this Act, the department shall furnish the person with an analysis of the person's performance on the examination.

"(o) The person who fails an examination may apply for a subsequent examination, but must pay the examination fee each time he applies.

Application of Sunset Act

"Sec. 6a. The Texas Water Well Drillers Board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the board is abolished, and this Act expires effective September 1, 1993.

Rules and regulations

"Sec. 7. (a) The Board shall adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of this Act, including all rules governing applications for a license, qualifications of applicants, marking of water well drilling rigs and equipment, standards of conduct for licensed water well drillers and all rules governing procedure and practice before the Board. Be it further provided, however, that before the Board may adopt any substantive rule under this Act, it must mail a copy of the proposed rule or amendment together with an informative summary of the rule or amendment to each person licensed under this Act, at least twenty (20) days prior to the proposed adoption date of such a proposed rule.

"(b) Full authority is given the Board to enforce by injunction or other appropriate remedy, in courts of competent jurisdiction, any and all reasonable rules, regulations, decisions, determinations and orders promulgated by it which do not conflict with any law. It shall be the duty of the Attorney General to represent the Board when requested to do so.

"(c) The Board shall propose and adopt all rules in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes).

Revocation of licenses

"Sec. 8. (a) The Board shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this Act or a rule adopted by the Board under this Act. Grounds for revocation, suspension, probation, or reprimand shall include intentional misstatement or misrepresentation of fact on an application or well log; failure to keep and transmit water well logs as provided herein; failure to advise a person for whom a well is being drilled that injurious water has been encountered, is a pollution hazard, and must be forthwith plugged in an acceptable manner; or being found to be an incompetent water well driller.

"(b) The Board shall, before suspending or revoking any license, placing a person on probation, or reprimanding a licensee, notify the holder in writing of any charges made in order to afford such holder an opportunity to be heard, which notification shall be given at least ten (10)

days prior to the date set for hearing, and which shall prescribe the time and place of the hearing. Such written notice may be served by mailing same by registered mail to the last known business address of such person. At such hearing such person and all persons complaining against him, as well as any other witness whose testimony is relied upon to substantiate the charges made, shall be entitled to be present. He shall also be entitled to present evidence, oral and written as may be relevant to the inquiry. In such hearing all witnesses shall be duly sworn and a record of the proceedings shall be taken. Any party to the proceedings desiring it shall be furnished with a copy of the record upon the payment to the Board of a fee not to exceed fifty cents (50¢) per page.

"(c) Every decision and order in a disciplinary hearing rendered by the Board shall be in writing and shall set forth briefly the findings of fact and Board's conclusions. Parties to the proceedings shall be notified of the decision or order in person or by mail and forwarded a copy of same; such orders or decisions shall be transmitted no later than thirty (30) days of conclusion of the hearing.

Appeal of Board action

"Sec. 9. (a) A person affected by any ruling, order, decision, or other act of the Board may appeal by filing a petition in a District Court in the county in which the alleged violation occurred.

"(b) Petition must be filed within thirty (30) days after the date of the Board's action, or, in case of a ruling, order, or decision, within thirty (30) days after its effective date.

"(c) Service of citation on the Board must be accomplished within thirty (30) days after the date the petition was filed. Citation may be served on the Executive Director of the department or on any member of the Water Well Drillers Board.

"(d) The plaintiff shall pursue his action with reasonable diligence.

"(e) The substantial evidence rule applies in the judicial review of any Board action, ruling, order, or decision. All administrative or executive action taken prior to the filing of the suit shall continue in force and effect until the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy

Duties of the department

"Sec. 10. (a) The department shall furnish the Board with necessary clerical services, including space for holding examinations; printing examinations; printing and mailing licenses; sending notices; collecting fees and issuing receipts; employing secretarial assistance; replying to routine requests for information; printing forms and information; typing all letters to be reproduced; maintaining records and completed examinations; and keeping records of receipts and disbursements; providing necessary legal services; and providing necessary investigative services, and the department shall promulgate procedures and standards for plugging water wells.

"(b) The Board shall have access to information kept by the department under this Act.

"(c) The department shall adopt the necessary procedural rules in order to carry out the imposed duties under this Section of this Act.

"(d) The department shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the

Board. The department shall make the information available to the general public and appropriate state agencies.

"(e) If a written complaint is filed with the Board relating to a licensee, the department, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notice would jeopardize an undercover investigation. The department shall maintain an information file about each complaint filed with the Board relating to a licensee.

Disposition of revenues

"Sec. 11. (a) The state auditor shall audit the financial transactions of the Board and department in connection with the administration of this Act during each fiscal biennium.

"(b) All money collected by the department under the provisions of this Act shall be deposited in the State Treasury to the credit of a special fund to be known as the water well drillers fund and may be used only to administer this Act.

"(c) On or before January 1 of each year, the department shall submit in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for funds received and disbursed under this Act by the department and the Board during the preceding year.

Civil penalty

"Sec. 12. Any person who fails to comply with the provisions of this Act, or with any rule or regulation promulgated by the board or the department under this Act, shall be subject to a civil penalty in any sum not exceeding One Thousand Dollars (\$1,000) for each day of noncompliance and for each act of noncompliance, as the court may deem proper. A firm, partnership, association, corporation, or other group or combination with which the person was connected in relation to the act of noncompliance is also subject to the civil penalty. The action may be brought by the board in any court of competent jurisdiction in the county where the offending activity is occurring or where the defendant resides. Full authority is also given the executive director to enforce by injunction, mandatory injunction or other appropriate remedy, in courts having jurisdiction in the county where the offending activity is occurring, the provisions of this Act. At the request of the board or the executive director, the Attorney General shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both the injunctive relief and civil penalty, authorized in this section. Any party to a suit may appeal from a final judgment as in other civil cases. The obtaining of a license under the provisions of this Act by a person shall not act to relieve that person from liability under any statutory law or the Common Law.

Marking rigs with identification number

"Sec. 13. It is the duty of all licensed water well drillers to see that all rigs used by them or their employees in the water well drilling business are marked with legible identification numbers at all times; the 'identification number' to be used on the rigs shall be the 'license number' which appears on the driller's license; the Board shall set out in detail in its rules the specific method and manner for marking the rigs. Any licensed

driller has thirty (30) days to comply with the regulations provided in this section.

Plugging of water wells

"Sec. 14. (a) It shall be the duty of each driller licensed under this Act to inform forthwith the landowner or person having a well drilled when water injurious to vegetation, to land or to fresh water has been encountered and such well must be plugged or properly completed in order to avoid injury or pollution.

"(b) It shall be the duty of the driller to see that such a well is forthwith plugged or completed under standards and procedures promulgated by the department.

"(c) It shall be the duty of whoever shall plug such a well to complete a plugging report within thirty (30) days and submit it to the executive director; appropriate forms shall be furnished by the executive director upon request.

Construction

"Sec. 15. Nothing in this Act shall be construed as affecting the ownership, or the rights of owners of the land, in underground water.

Severability clause

"Sec. 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without defeating the purpose or objective of the provision, and to this end, the provisions of this Act are declared to be severable.

Transfer of functions

"Sec. 17. In the event that the functions of the Texas Department of Water Resources necessary to the proper implementation of its duties under this Act are transferred to any other agency, the authority given herein to the Texas Department of Water Resources shall be transferred to such other agency."

Sec. 2.⁶⁶ Each valid certificate of registration issued by the board on or before September 1, 1981, continues in effect until its regular expiration date.

Sec. 3.⁶⁶ (a) Except for the ex officio members, incumbent members of the board on the effective date of this Act serve the remainder of their terms.

(b) The governor shall appoint one public member for a term expiring on September 15, 1983, one public member for a term expiring on September 15, 1985, and one public member for a term expiring on September 15, 1987.

Sec. 4. This Act takes effect September 1, 1981.

Sec. 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

⁶⁶. V.A.T.S. Water Auxiliary Laws, art. 7621e note.

Passed the Senate on April 29, 1981, by a viva-voce vote; Senate concurred in House amendment on May 26, 1981, by a viva-voce vote; passed the House, with amendment, on May 23, 1981, by a non-record vote.

Approved June 17, 1981.

Effective Sept. 1, 1981.

INDUSTRIAL DEVELOPMENT CORPORATIONS AND TEXAS SMALL BUSINESS DEVELOPMENT CORPORATION

CHAPTER 792

S. B. No. 978

An Act relating to industrial development corporations; their projects, management, powers, duties, privileges, and their funding and certain tax exemptions; placing certain duties on the Texas Industrial Commission; creating the Texas Small Business Development Corporation with certain powers and limitations; providing for tax liability on lessees, purchasers, or lenders; validating the formation of certain corporations; amending the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), by amending Sections 2, 3, 4, 16, 21, 22, 23, 24, 25, 26, 27, 29, 31, 32, and 35 and Subsection (c), Section 7; Subsection (a), Section 28; amending Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, by amending Section 1, Article 12.03 and by adding Section (HH) to Article 20.04.

Be it enacted by the Legislature of the State of Texas:

Section 1. Section 2, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended⁶⁷ to read as follows:

"Sec. 2. Wherever used in this Act unless a different meaning clearly appears in the context, the following terms, whether singular or plural, shall mean as follows:

"(1) 'Board of directors' shall mean the board of directors of any corporation organized pursuant to the provisions of this Act.

"(2) 'Commission' shall mean the Texas Industrial Commission.

"(3) 'Corporation' shall mean any industrial development corporation organized pursuant to the provisions of this Act.

"(4) 'Cost' as applied to a project shall mean and embrace the cost of acquisition, construction, reconstruction, improvement, and expansion, including the cost of the acquisition of all land, rights-of-way, property rights, easements, and interests, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving, and expanding any such project, administrative expense and such other expense as may be necessary or incident to the acquisition, construction, reconstruc-

67. Vernon's Ann.Civ.St. art. 5190.6, § 2.